



INMATE 501

CONVERGING CRISES IN WISCONSIN ADULT AND JUVENILE PRISONS

WRITTEN BY STATE REPRESENTATIVE EVAN GOYKE

INMATE 501 will be the first Wisconsin inmate sent out of state because of overcrowding in nearly 20 years. Recent prison population growth is set to exceed all available options in state. We face challenging decisions. Do we send people out of state? Do we build a new prison? Do we reform?

This publication makes the case for reform.

We can and should reform our criminal justice and correctional systems.
We can reduce incarceration and reduce crime. Here’s how and why.

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The information presented in this publication is available from the Department of Correction’s website, www.doc.wi.gov

Any additional information obtained from a source outside the DOC is cited where used.



Representative Evan Goyke is currently serving in his third term in the State Assembly. Representing the 18th Assembly District on Milwaukee’s north and west sides, Representative Goyke has served each session on committees focused on the criminal justice system.

Prior to his election to the Assembly, Representative Goyke served as a trial attorney in the Office of the Wisconsin State Public Defender in Milwaukee, where he provided legal representation to indigent defendants in a large range of criminal cases. He is a 2009 graduate of Marquette University Law School.

ADULT PRISON OVERCROWDING

In the late 1990's and early 2000's, Wisconsin, like many states, experienced sustained prison population growth. Since 1990, Wisconsin's prison population has tripled.

During the late 2000's, Wisconsin's prison population stabilized and from 2008 to 2010, the population declined slightly. Again, Wisconsin's prison population mirrored national trends during this period.

Over the past few years, however, the prison population has increased again. Wisconsin's prisons are designed to house about 16,000 inmates. Today they hold roughly 23,000. Cells built for one now hold two. Stories of three person cells and rooms housing six or more are not uncommon. This overcrowding reduces safety for inmates and prison staff.

As the prison population has grown, the overcrowding has burst the seams of the institutions and overflowed to the county jails through the use of contract beds.

Beginning in 2015, the use of county jails has increased, and offers a clear view on Wisconsin's prison population growth. The use of contract beds, the cash payment to county jails for housing state inmates, has increased each of the last three years.

Seen below, beginning in January of 2016, the DOC utilized roughly 50 contract beds. In other words, in January of 2016, Wisconsin's prisons were overflowing by 50 inmates.

Today, the DOC must send over 450 inmates to contract beds.

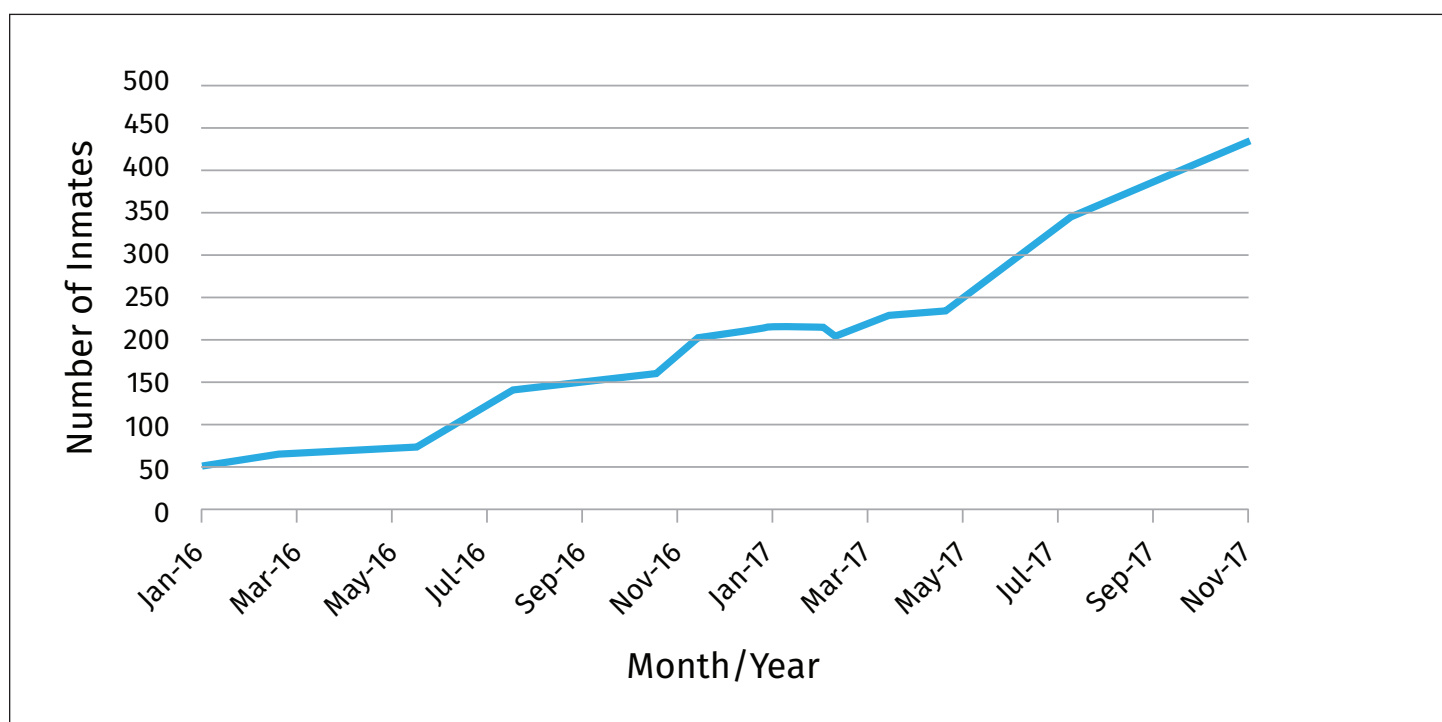
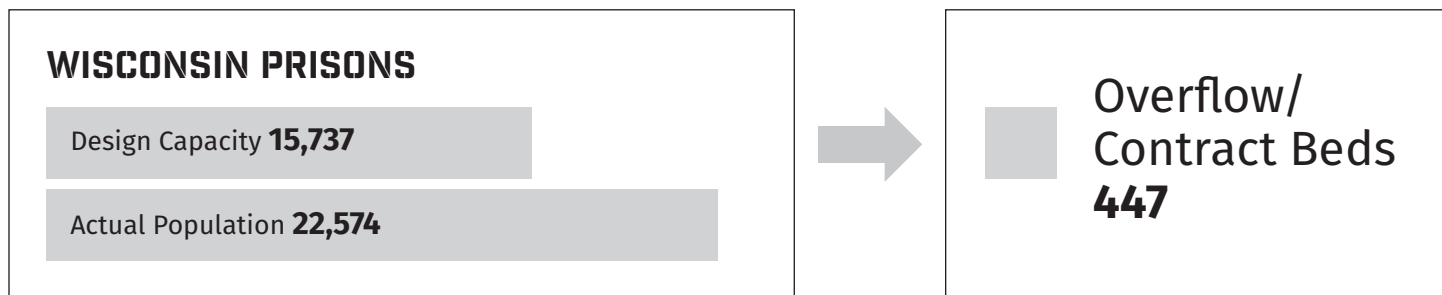


Figure 1: Inmates in Contract Facilities 2016-Present



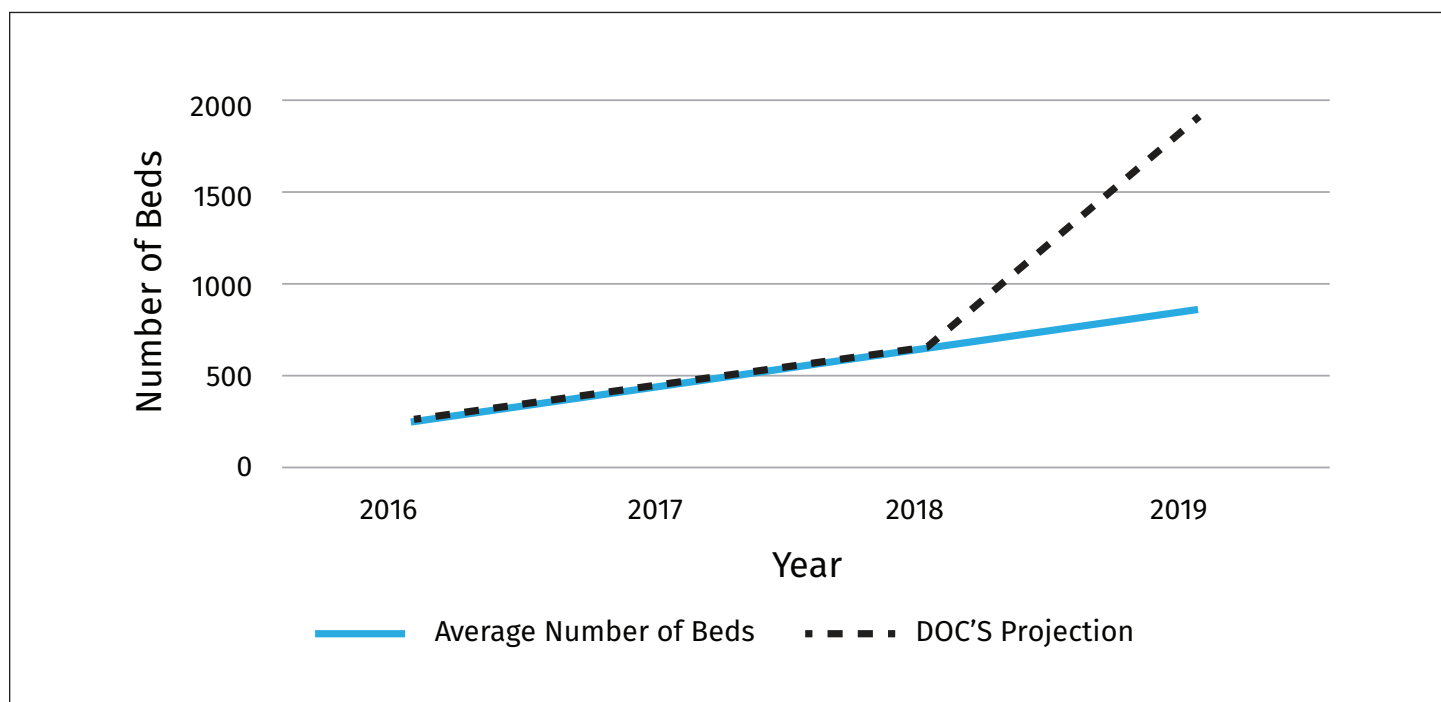
According to the DOC, there are only 500 available contract beds in Wisconsin. Today, we use 89% and have only 53 contract beds remaining.

When the remaining contract beds are filled, the DOC will have to find other options. One option, previously used by Wisconsin, is to contract with an out of state private prison corporation. The largest private prison group is CoreCivic (formerly Corrections Corporation of America). According to a November 2017 *Washington Post* article, CoreCivic charges \$57.50 per day per inmate. Beyond cost, states have experienced safety and accountability concerns with private prisons.¹

Over the past 24 months, the need for contract beds has increased an average of roughly 17 additional contact

beds per month. The chart below shows the future growth of contract beds. The solid line is based on the monthly average increase. The second line, the dotted line, is the DOC's projected need for contract beds as submitted to the Governor in the fall of 2016 as part of the DOC's agency budget request.

89% of available beds are filled. Without change, Inmate 501 will be sent out of state in 2018



The cost of each contract bed is \$51.50 per inmate per day. The state has budgeted \$8.63 million each year for these payments. While the \$8.63 million may cover the cost of overcrowding for 2018, the population growth may force the need for contract bed funding beyond what is in the state's budget plan. If the DOC's estimate for prison population growth is correct or if average monthly increase remains steady, Wisconsin will not have enough money budgeted for these payments. The difference could be tens of millions of additional contract bed payments by 2019 on top of the \$8.63 million.

The difference could be tens of millions of additional contract bed payments in 2019 on top of the \$8.63 million.

Wisconsin has budgeted \$8.6 million for prison overcrowding, the actual cost may be higher

1. Beam, Adam; AP Reporter. "Amid overcrowding, Kentucky to reopen private prison." *The Washington Post*. (November 16, 2017).

One important budget provision to address prison overcrowding was the addition of 250 beds in Wisconsin's Earned Release Program (ERP). The ERP is a treatment program to address Alcohol and Other Drug Abuse needs. An inmate must be found eligible by the sentencing judge, have an AODA need, and not be convicted of certain violent offenses.

The 2018-2019 state budget increased ERP funding by \$1.8 million, but that expenditure is projected to save \$2.8 million from reduced incarceration.

The 250 new ERP beds are estimated to save \$2.8 million because successful completion of the ERP allows the inmate to be released onto community supervision. The \$2.8 million is realized because successful completion of the ERP, on average, reduces an inmate's sentence by 384 days.

5,900 inmates are on the waitlist for AODA treatment in Wisconsin prisons

Despite the investment, there are 5,900 inmates on the waiting list for a treatment bed in the ERP program. ERP beds are available at Robert E. Ellsworth Correctional Center, Chippewa Valley Correctional Treatment Facility, and Racine Correctional Institution facilities, all medium or minimum security facilities.

ERP beds also increase public safety by treating addiction and thus reducing recidivism. Inmates sent to contract beds are not able to participate in ERP treatment, nor does the DOC reimburse counties for treatment programming when paying for contract beds.

Sending inmates out of state or constructing a new prison would further expand the DOC's budget. Already well over \$1 Billion a year, the DOC is one of the largest budget items in Wisconsin. Today, the DOC's share of general tax dollars is larger than the entire UW System's share.

The addition of a new prison would require borrowing money to build it and on going tax payments to operate it. Borrowing money leaves other projects, like University or highway construction, with less opportunity to move forward and increases the possibility of delay. Operational costs are likely to total several million a year. The DOC recently placed the cost of constructing a new, 1,300 capacity prison, at over \$300 million. This estimate did not include the annual operating costs.

If nothing is done and population trends continue as the DOC project, the increases to the population will soon exceed all available space. This reality recently led DOC Secretary John Listcher to admit that "we will need some relief and need it before 2020."

Inmate 501 is only a few months away from being shipped out of Wisconsin. We face three options:

- 1) Pay to ship inmates out of state**
- 2) Pay to build a new prison**
- 3) Reform our criminal justice system**

A recent report from the DOC on the cost of constructing a new prison topped \$300 million

JUVENILE VACANCIES

Juvenile incarceration rates largely mirrored the adult system during the 1990's and early 2000's. At the turn of the century, Wisconsin operated three juvenile facilities and housed a population near 1,000.

Changes in federal and state policies led to the long and steady decline in the number of juveniles incarcerated in Wisconsin. By the late 2000's, the juvenile population had fallen so substantially that the state's two largest juvenile prisons were consolidated into one, Lincoln Hills, a facility north of Wausau, three hours away from the State's largest communities.

When Lincoln Hills became the state's only juvenile facility for boys, the population was over 250 boys.

Over time, a clear and persistent decline in the number of boys incarcerated at Lincoln Hills is evident. Today the population of Lincoln Hills is 130.

Several competing factors have led to such a major decline in juvenile incarceration. Increased understanding of brain development, trauma, and the study of evidence based practices have led states, including Wisconsin, to lower juvenile incarceration rates.

Another reason for the decline? Cost.

In Wisconsin, counties receive payments from the State called "youth aids." These dollars are now administered by the Department of Children and Families and provide counties with funding for an array of youth related services. One expense is the payment of incarceration of juveniles when necessary.

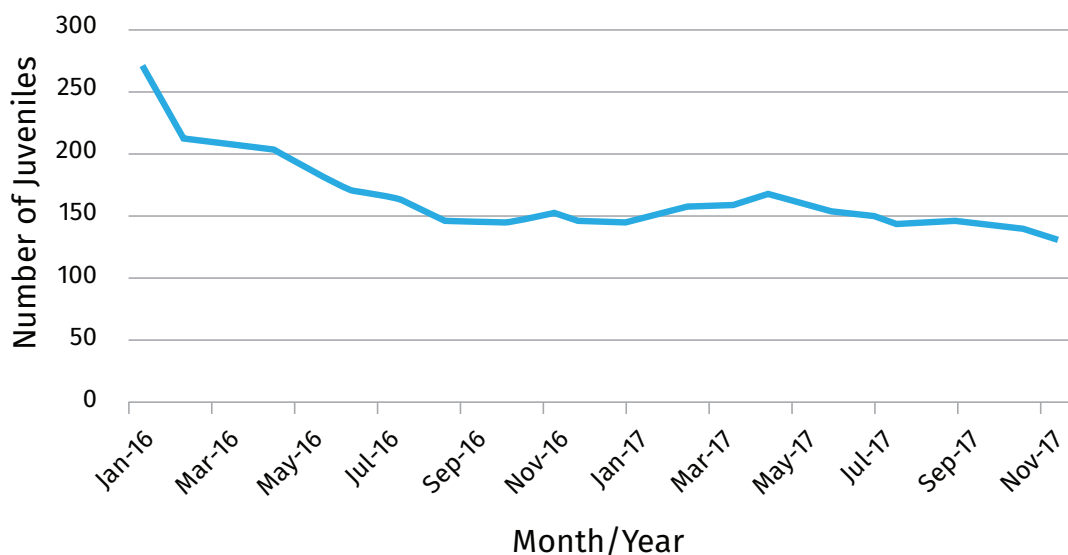
Unlike the adult prison system, each county pays the state for incarcerating juveniles. The current daily rate for a juvenile is \$292.00 per juvenile per day. Due to the declining population, the 2018-2019 state budget increased the daily rate to \$394.00 per juvenile per day by 2019.

As the population of Lincoln Hills decreases (down 50% since 2016), the cost per juvenile per day increases (up 25% in 2018)

The cost increase magnifies the disincentive for counties to send juveniles to Lincoln Hills, which will further reduce the population. This downward spiral places the future of the prison at risk.

The cost savings realized from a large facility no longer exist. A facility built for 550 inmates, but holding only a fraction of that number, is no longer an efficient use of resources.

Lincoln Hills is 70% vacant. Decreasing population and increased costs will lead to the prison closing



SOLUTIONS

Wisconsin's prison population experience is unremarkable, except for our recent inaction. Tackling the rising budget pressures from prison overcrowding, many states have engaged in large scale criminal justice and corrections reform.

Beginning in the late 2000's, national groups began to aid states in their quest to reduce prison populations and prison budgets. In 2009, the Justice Reinvestment Initiative, a national group part of Council of State Government, came to Wisconsin and studied our criminal justice system. Several policy recommendations were

made. Some were acted upon, some not. Key legislative successes were repealed a few years later.

Today, Wisconsin's criminal justice and corrections systems look much like they did ten years ago when the Justice Reinvestment Initiative made their report. We find ourselves again overcrowded and again in need of reform.

Solutions exist and have succeeded in many states regardless of political majority. The following section details three proposals modeled after proposals that have each passed with bipartisan support in states throughout the country.

LRB - 4783; CLOSE LINCOLN HILLS AND REPURPOSE AS ADULT TREATMENT FACILITY

Lincoln Hills must close. As the population drops, a better, more efficient use for the facility exists. Research shows that smaller juvenile facilities, based closer to home and individual need, can lead to lower recidivism and thus lower crime.

Adult prisons are overcrowded and a waiting list for treatment exceeds 5,900 inmates. The facilities at Lincoln Hills could accommodate adult inmates eligible for treatment through the Earned Release Program. The Earned Release Program saves money and reduces crime. Greater access to treatment would

reduce the waitlist and increase the benefits of the ERP program.

LRB - 4783 accommodates the capital costs associated with modifying Lincoln Hills to become an adult treatment facility. Similarly, an appropriation is necessary for the creation of smaller need-based or regional juvenile facilities. Operational costs should be able to be absorbed at current funding levels, as the state budget has appropriated \$17 million for contract beds and increased the juvenile daily rate to \$394 per day per juvenile.



Politico

Christie plans to turn state prison into drug treatment center for inmates

By RYAN HUTCHINS | 01/12/2016 02:43 PM EST

"I don't know how we can effectively rehabilitate someone who has been involved in criminal activity if the root of their criminal activity is drug use and abuse and we're not treating them for that in a way that uses the most modern techniques," Christie said Monday. "People are now going to be getting treatment that will help them when they leave the corrections institution to have a chance to have a better life." – Gov. Chris Christie (R-New Jersey), NJ spotlight – April 11, 2017²

"I am proud to report that my 2018 budget plans for the closure of another one of the State's prison facilities. Due to the continuing decrease in the State's prison population, we will be closing the satellite wing of the Bayside State prison located at the Ancora Psychiatric Hospital. The approximately 250 inmates currently housed there will be moved to our other facilities.

There will be no layoffs as a result of this closure and we will work with the existing employees for a smooth transition between other roles in the Department of Corrections. We have made reducing the prison population a hallmark of this Administration. Tough law enforcement does not mean warehousing our citizens to make our streets safer."

– Gov. Chris Christie (R-New Jersey), 2017 State Budget Address

2. Stainton, Lilo H.; "State Poised to Open First 'Rehab Prison' at Mid-State Correctional Facility." *NJSpotlight.com*. (April 11, 2017).



SC Law Has Lowered Crime While Saving Almost \$500 Million

Before the law was passed, it was expected that the state's prison population would be about 29,000 by now, based on past growth. But instead, with the law in place, the prison population is just above 20,000, says Bryan Stirling, Department of Corrections director. "If we had 29,000 people, we would've had to build probably three or four more prisons right now at a considerable cost to build a prison, and I'm not sure we'd be able to staff them," he says. **Not building those prisons has saved an estimated \$491 million.**³

Instead, the Department of Corrections has closed six prisons since 2010. The state's imprisonment rate has dropped from 11th in the nation to 20th, Stirling says. "We're seeing a decrease in the crime rate. We're seeing a decrease in the recidivism rate. People aren't coming back to prison after they leave."⁴

LRB-0522/2; CRIMELESS REVOCATION REFORM

A major source of new prison admissions are individuals being returned to prison because of a revocation of community supervision. Many individuals are returned to prison for committing a new crime or crimes while on supervision. These individuals face the possibility of incarceration from both the revocation and new criminal charges.

A separate group of individuals are returned to prison through revocation without committing a new crime. These individuals have a "rules only" violation of supervision. Rules violations often include a positive drug test, missing meetings or treatment appointments, or not complying with geographical or curfew restrictions.

Consequences should exist for violating the rules of supervision, including incarceration. However, returning people to prison for acts that are not criminal can be a punishment far greater than necessary to correct the behavior.

Reforming revocations to limit the criteria for when individuals can be returned to prison for "rules only" violations maintain public safety and accountability,

while limiting new prison admissions for non-criminal behavior.

LRB-0522 limits the period of incarceration for "rules only" violations at 30 days, except under certain circumstances. Under the bill, the DOC retains discretion to revoke supervision if the individual is alleged to have committed a new crime, absconded from supervision, violated a "no-contact" order, or amassed three or more rules violations.

In 2015, the DOC returned roughly 3,000 men to prison through the revocation of supervision. According to the DOC, roughly 21.5% were returned for "rules only" violations, or 630 individuals. Data is currently not available to determine how many of the 630 individuals LRB-0522/2 would apply to, but even if we assume 25%, the reduction in prison admissions would be over 150 fewer inmates each year.

Revocation reform was recommended by the Justice Reinvestment Initiative in 2008. No action has been taken in Wisconsin. Reforming crimeless revocations has been a successful policy advanced in other states tackling criminal justice and corrections reform.

3. Pew Center on the States; "South Carolina's Public Safety Reform: Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs." PewTrusts.org. (June, 2010).

4. Justice Policy Institute; "Due South: South Carolina, Justice System Overhaul." Justicepolicy.org. (May 2011).



Michigan

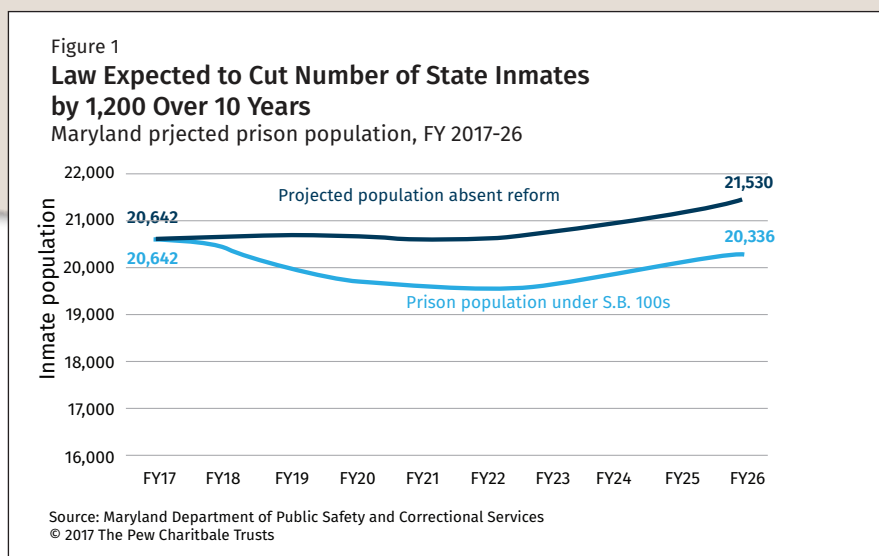
Gov. Rick Snyder signs bipartisan legislation to modernize Michigan's criminal justice system

"Criminal justice reform is not just the prison walls. It's also probation, parole and the juvenile justice side of the equation. So what we did was put in place sort of best practices, a series of bills that have tested in other states. . . . Michigan needs a criminal justice system that helps break the cycle of incarceration, reduces costs to taxpayers and increases safety in our communities."

—Republican State Senator John Proos (R-St. Joseph)⁵



Maryland



On May 19, 2016, Maryland Governor Larry Hogan (R) signed into law S.B. 1005, the Justice Reinvestment Act, which advances research-based sentencing and corrections policies. Developed by the bipartisan Justice Reinvestment Coordinating Council and passed unanimously in the Senate and with strong support in the House of Delegates, the bill is projected to cut the state's prison population by almost 1,200 inmates and save an estimated \$80.5 million over 10 years.

Guidelines for use of proven-effective, "swift-and-certain," graduated-sanctions for "technical" violations of probation and parole, rather than inflicting full suspended prison time for every violation.

State officials projected that over 10 years, the council's recommendations would avert an anticipated 4 percent prison growth and reduce the prison population by nearly 1,200 inmates (see Figure 1), saving Maryland taxpayers \$80.5 million. The law requires that a portion of the savings be used to fund grants for community-based recidivism reduction programs. The fiscal year 2017 budget also included \$3 million for treatment of substance use disorders.⁶

5. Associated Press; "Michigan Senate Approves Broad Criminal Justice Bills." Wndu.com. (February 02, 2017). Website of Senator John Proos; "Criminal Justice Reforms Headed to Governor's Desk." senatorjohnproos.com. (February 02, 2017).

6. Pew Center on the States; "Maryland's 2016 Criminal Justice Reform." PewTrusts.org. (November 13, 2017).

LRB-4858; EXPANDING EARNED RELEASE

In 1998, Wisconsin eliminated incentives for inmates to behave within the prison walls. Part of a national trend at the time, Wisconsin's "Truth in Sentencing" law prevents the DOC from releasing inmates early for good behavior. Only inmates eligible for the Earned Release Program (discussed earlier) and the Challenge Incarceration Program can receive a reduction of the term of incarceration.

Good behavior should be incentivized and rewarded, but limited. Under LRB-4858, an inmate may earn up to a 15% reduction of his or her prison sentence based on the successful completion of programming or treatment that is evidence based to reduce recidivism.

LRB-4858 will increase safety and reduce recidivism by incentivizing positive change.

Under LRB-4858, an inmate who receives a reduction in incarceration would have that same amount of time added to his or her extended supervision. Sentences would be served in their entirety, but with the flexibility to encourage and reward good behavior.

Further, under LRB-4858, the DOC would be required to maintain an updated release date based on an inmate's completion of programming. This requirement allows crime victims, law enforcement, and an individual's family to know the date certain for release.

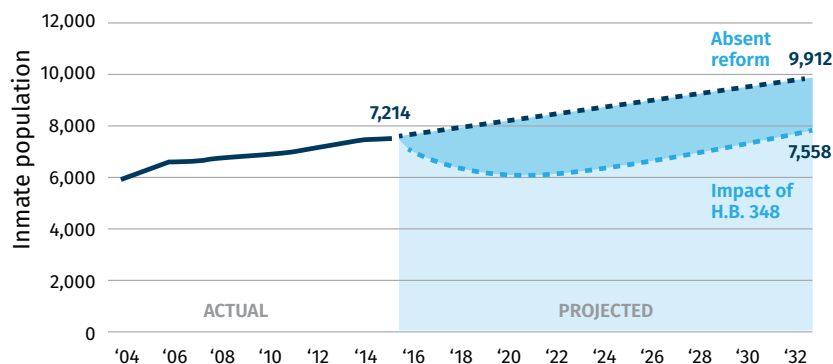
Several states have begun to unravel "Truth in Sentencing" laws through restoring some flexibility for earned release. Similar efforts to LRB-4858 have been advanced in several states.

Utah

Figure 1

H.B. 348 is Projected to Avoid Nearly All Prison Growth

Cost savings estimated to exceed \$500 million over the next 20 years



Source: MGT of America Inc. (prison population projection). The Pew Charitable Trusts (projection with H.B. 348 policy changes)
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Justice Reinvestment Initiative HB 348

The Utah Commission on Criminal and Juvenile Justice (CCJJ) analyzed state corrections and criminal justice data and developed a comprehensive set of evidence-based policy recommendations to reduce recidivism, hold offenders accountable, and control the state's prison growth. When fully implemented, the recommendations are projected to reduce prison growth by 2,551 inmates over the next 20 years and thereby avert \$542 million in corrections spending.⁷

7. Board of Pardons and Parole Utah; "Justice Reinvestment Initiative House Bill 348." *Bop.utah.gov*. (October 26, 2016).

Mississippi Senate Adopts Bipartisan Criminal Justice Reform Measures

Mississippi Gov. Phil Bryant on Monday signed a bill designed to make the criminal justice system more efficient and less expensive.

Bryant said House Bill 585, which becomes law July 1, will protect public safety and could save the state \$266 million in prison expenses, spread over 10 years.

The bill is modeled on criminal-justice changes made in recent years in Texas, Georgia and other states with Republican governors who campaigned as being tough on crime.

“Gov. Perry reminded me that Texas is not soft on crime,” Bryant said.⁸

“The growing cost of corrections is unsustainable for Mississippi taxpayers,” Lt. Gov. Tate Reeves said. “Our goal with this legislation is to rein those costs in while continuing to protect the public from violent offenders.”⁹

CONCLUSION

Inmate 501 is a symptom of the crises in Wisconsin’s adult and juvenile prison systems. Inaction will cost millions and reduce safety. Smart reform is needed. Successful reforms have been implemented by Republicans and Democrats around the country.

Closing Lincoln Hills and repurposing the facility as an adult treatment prison will ease overcrowding and the long waiting list for treatment. A new, risk-based and regionalized model of juvenile corrections will increase staff and inmate safety and reduce crime through reduced recidivism.

Reforming Crimeless Revocations and the expanding Earned Release system decrease pressure on the adult prison system, while promoting positive behavior and holding individuals accountable for their actions.

These reforms will prevent the need to build a new prison. Further savings will be realized through the reduction of cash payments to counties for overcrowding. Direct savings will be in the tens of millions, avoided future costs in the hundreds of millions.

A new generation of leaders are reforming the criminal justice system. It is the responsibility of leaders to take on the difficult challenges we face. The converging crises in Wisconsin’s adult and juvenile prison systems can no longer be ignored.

Wisconsin should learn from the lessons of other states. Less crime and less incarceration are both possible. Overflowing prisons and outdated juvenile facilities do not make us safer – avoiding Inmate 501 will.

8. Associated Press; “Gov. Phil Bryant Signs Criminal Justice Reform Bill Spearheaded by Pascagoula Sen. Brice Wiggins.” *GulfLive.com*. (March 31, 2014).

9. Norquist, Grover; Guest Columnist. “Nation Taking Notice of Mississippi Prison Reform.” *ClarionLedger.com*. (April 08, 2016).